

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BOFI FEDERAL BANK, a federally chartered  
banking institution,

Plaintiff,

vs.

ADVANCE FUNDING, LLC, KIRK A.  
TOVEY, individually and as trustee of the  
KIRK A. TOVEY REVOCABLE TRUST,  
and SETTLEMENT COLLECTION  
SERVICE, LLC.

Defendants.

No.

COMPLAINT FOR TORTIOUS  
INTERFERENCE WITH CONTRACT,  
UNJUST ENRICHMENT, DECLARATORY  
RELIEF AND JURY DEMAND

COMES NOW Plaintiff, BOFI FEDERAL BANK, by and through its attorneys, Kathleen Nelson of Lewis Brisbois Bisgaard & Smith, and complains and alleges against the above named defendants as follows:

**I. PARTIES**

1.1 Plaintiff BofI Federal Bank ("BofI") is a federally chartered banking institution with its principal place of business located at 4350 La Jolla Village Drive, Suite 140, San Diego, CA 92122.

1.2 Upon information and belief, Defendant Advance Funding, LLC ("Advance Funding") is a New York registered limited liability company engaged in the business of

1 purchasing state lottery prize payments from state lottery winners, with its principal place of  
2 business located at 48 Wall Street, 11<sup>th</sup> Floor, New York, New York, 10005.

3 1.3 Upon information and belief, Defendant Kirk A. Tovey is an individual who  
4 resides in Jacksonville Beach, Florida and is trustee of the Kirk A. Tovey Revocable Trust, which  
5 is the assignee of record of Advance Funding's rights under a certain Lottery Prize Assignment  
6 Agreement, between Sheena Venzant ("Venzant") and Advance Funding, dated May 17, 2013,  
7 and the assignee of record to the lottery prize payments described in paragraph 3.10.

8 1.4 Upon information and belief, Defendant Settlement Collection Service, LLC  
9 ("Settlement Collection") is the current owner of that certain Reliastar Life Insurance Company  
10 life insurance policy, measuring the life of Sheena Venzant, and bearing policy number  
11 AD20532551. Upon information and belief, Settlement Collection is a Florida registered limited  
12 liability company with principal place of business located at 3333 Atlantic Blvd., Jacksonville, FL  
13 32207.

## 14 II. JURISDICTION AND VENUE

15 2.1 This Court has jurisdiction over the subject matter of this lawsuit and of the parties  
16 hereto pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states, and the  
17 matter in controversy exceeds the sum of \$75,000.

18 2.2 Venue is properly laid in this District pursuant to 28 U.S.C. § 1391 as the events  
19 giving rise to this action occurred in the counties served by the United States District Court for the  
20 Western District of Washington.

## 21 III. RELEVANT FACTS

22 3.1 On or about November 16, 2011, Venzant won \$1,000 a week for life in the  
23 Washington State Lucky for Life Lottery Drawing ("Washington Lottery"), payable in annual  
24 installment payments in the amount of Fifty-Two Thousand Dollars (\$52,000.00) each for the rest  
25 of her life (the "Installments").

26 3.2 On or about March 7, 2012, Venzant entered into a written Lottery Payment  
27 Assignment Agreement with BofI (the "BofI Agreement"), whereby Venzant agreed to and did

1 assign to Bofl the right to accept and purchase a portion of certain of the Installments. A Terms  
2 Rider was attached to the Bofl Agreement, detailing the assigned payments of Fifty-Two  
3 Thousand Dollars (\$52,000.00) in nineteen (19) annual payments, commencing on November 16,  
4 2012 and continuing until November 16, 2030.

5 3.3 That same day, Venzant and Bofl executed a Life Contingent Payment Addendum  
6 (“Addendum”), which modified the assigned payments to twenty-five (25) annual payments in the  
7 amount of Forty-Seven Thousand Dollars (\$47,000.00) each, commencing November 16, 2012  
8 and continuing until November 16, 2036, and clarified that the lottery winnings were payable in  
9 life contingent annual installments.

10 3.4 Additionally, in the Addendum, Bofl and Venzant acknowledged that a policy of  
11 life insurance was necessary in order to protect Bofl in the event of Venzant’s demise prior to  
12 Bofl’s collection of all installments purchased. Venzant further acknowledged and agreed that  
13 Bofl would be the owner and sole beneficiary of the life insurance policy, and disclaimed and  
14 waived any rights to the policy or to the proceeds thereof.

15 3.5 On or about March 9, 2012 and March 14, 2012, pursuant to the Uniform  
16 Commercial Code, Revised Article 9, Plaintiff Bofl caused to be filed a Uniform Commercial  
17 Code Financing Statement and Uniform Commercial Code Financing Statement Amendment,  
18 respectively, thereby providing public notice of the Bofl Agreement.

19 3.6 Shortly thereafter, in furtherance of the Bofl Agreement and Addendum, Bofl  
20 introduced Venzant to insurance brokerage firm, The Meltzer Group, so that she may obtain a life  
21 insurance policy.

22 3.7 On or about June 20, 2012, Reliastar Life Insurance Company issued to Venzant  
23 life insurance policy number AD20532551, which measured the life of Venzant and listed Venzant  
24 as the owner of the policy (the “Policy”).

25 3.8 The Policy featured a two-year contestability period. Venzant agreed that Bofl  
26 would file a petition seeking approval of the Bofl Agreement after the expiration of the  
27 contestability period.

1           3.9     During the contestability period, Bofl provided Venzant several advances. In total,  
2 Bofl advanced to Venzant the sum of \$15,000.

3           3.10   Without Bofl's knowledge and notwithstanding the valid contract between Bofl  
4 and Venzant, on or about May 17, 2013, Venzant and Advance Funding entered into a Lottery  
5 Prize Assignment Agreement, wherein Venzant assigned to Advance Funding the vast majority of  
6 the same payments that she had already assigned to Bofl, to wit, twenty (20) annual payments in  
7 the amount of Fifty Thousand Dollars (\$50,000) each, commencing on November 16, 2013 and  
8 continuing until November 16, 2032 (the "AF Agreement").

9           3.11   Shortly thereafter, without providing notice to Bofl even though Bofl was clearly  
10 an indispensable party under CR 19 given that Bofl, pursuant to the Bofl Agreement, had an  
11 interest in the vast majority of the payments Advance Funding was seeking to purchase from  
12 Venzant, Advance Funding filed a petition in the Superior Court of Washington in Thurston  
13 County seeking approval of the assignment in the AF Agreement (the "Transfer Action").

14           3.12   On or about June 14, 2013, without Bofl's knowledge and notwithstanding the  
15 valid contract between Bofl and Venzant, an Order Granting Petition and Approving Lottery Prize  
16 Assignment was filed, which granted the AF Petition, and allowed Advance Funding to further  
17 assign the payments to the Kirk A. Tovey Revocable Trust (the "Court Order"). Indeed, upon  
18 information and belief, the Court was intentionally never apprised by Advance Funding of Bofl's  
19 rights and interests to the vast majority of the payments Advance Funding was seeking to purchase  
20 from Venzant.

21           3.13   At or around this time, upon information and belief, Venzant changed the owner of  
22 the Policy to Settlement Collection, despite having no legal or other rights to the Policy given that  
23 she acknowledged and agreed that Bofl was the owner and sole beneficiary of the Policy, and  
24 disclaimed and waived any rights to the Policy or to the proceeds thereof.

25           **IV.     COUNT 1 – TORTIOUS INTERFERENCE WITH CONTRACT**

26           4.1     Bofl incorporates by reference each and every paragraph above as if fully set forth  
27 herein.

1           4.2     Bofl had a valid and enforceable contractual relationship with Venzant, as set forth  
2 in the Bofl Agreement and the Addendum and as provided under Washington law. Pursuant to  
3 RCW §67.70.100, Venzant had no right of cancellation of the Bofl Agreement.

4           4.3     The Defendants knew, or should have known, through diligent business practices,  
5 oral and/or written notification, constructive notification of public filing of a Uniform Commercial  
6 Code financing statement, or from Uniform Commercial Code searches, that Bofl had a valid and  
7 enforceable contractual relationship with Venzant. Indeed, Advance Funding is actively engaged  
8 in purchasing lottery payments in Washington, pursuant to RCW §67.70.100, and the Defendants  
9 have collectively filed hundreds of Uniform Commercial Code financing statements, thereby  
10 confirming that knowledge is properly imputed to the Defendants.

11          4.4     The Defendants intentionally, willfully and improperly interfered with the  
12 contractual relationship between Bofl and Venzant for the purpose of inducing Venzant to breach  
13 the contractual obligations contained in the Bofl Agreement and the Addendum and to enter into  
14 an agreement with Advance Funding.

15          4.5     The Defendants' intentional and willful interference with the Bofl Agreement was  
16 without privilege.

17          4.6     The Defendants' intentional and willful interference with the Bofl Agreement was  
18 solely for their economic benefit.

19          4.7     The Defendants' tortious interference with Bofl's contractual relationship was done  
20 with actual malice toward Bofl and/or amounted to a willful and wanton disregard for Bofl's  
21 rights, and was improper in motive.

22          4.8     The Defendants' illegal, intentional and malicious conduct induced Venzant to  
23 breach her obligations under the Bofl Agreement and the Addendum and to enter into an  
24 agreement with Advance Funding solely for their economic benefit.

25          4.9     The Defendants' conduct caused Bofl to suffer damages, including monetary  
26 damages well in excess of Seventy-Five Thousand Dollars (\$75,000), for which the Defendants  
27 are liable.

**V. COUNT II - UNJUST ENRICHMENT**

5.1 Bofl incorporates by reference each and every paragraph above as if fully set forth herein.

5.2 The AF Agreement, the Court Order, the assignment of payments from Venzant to Advance Funding and then to the Kirk A. Tovey Revocable Trust, the transfer of ownership in the Policy and the above-described course of conduct of the Defendants conferred a benefit on the Defendants.

5.3 The Defendants knew they were receiving value from the AF Agreement, the Court Order, the assignment of payments from Venzant to Advance Funding and then to the Kirk A. Tovey Revocable Trust, the transfer of ownership in the Policy and their above-described course of conduct.

5.4 The Defendants knew, or should have known, through diligent business practices, oral and/or written notification, constructive notification of public filing of a Uniform Commercial Code financing statement, or from Uniform Commercial Code searches, that the vast majority of the value they received belonged to Bofl, as the Bofl Agreement and Addendum covered the vast majority of the same payments that Venzant assigned to Advance Funding. Indeed, Advance Funding is actively engaged in purchasing lottery payments in Washington, pursuant to RCW §67.70.100, and the Defendants have collectively filed hundreds of Uniform Commercial Code financing statements, thereby confirming that knowledge is properly imputed to the Defendants.

5.5 By reason of the foregoing, the Defendants have been unjustly enriched at Bofl's expense.

5.6 The circumstances make it unjust for Defendants to retain the benefits conferred upon them without payment to the party unjustly enriched.

5.6 As the party unjustly enriched, the Defendants are equitably obligated to compensate Bofl for the improper benefits they received.

**VI. COUNT III - DECLARATORY RELIEF**

6.1 An actual controversy exists between Bofl and the Defendants as to the ownership

1 and the beneficial interest in the Policy, given that Venzant had no legal or other right to transfer  
 2 ownership of the Policy and/or change the beneficiary since she acknowledged and agreed that  
 3 Bofl was the owner and sole beneficiary of the Policy, and disclaimed and waived any rights to the  
 4 Policy or to the proceeds thereof.

5 6.2 An actual controversy also exists between Bofl and the Defendants as to the  
 6 validity of the Court Order given the fact that (i) Venzant had already sold to Bofl, pursuant to the  
 7 Bofl Agreement, the vast majority of the payments Advance Funding was seeking to purchase  
 8 from Venzant; and (ii) Advance Funding did not provide notice of the Transfer Action to Bofl  
 9 even though Bofl was clearly an indispensable party under CR 19.

10 6.2 Bofl is entitled to a declaratory judgment from this Court setting forth and  
 11 decreeing (i) that it is the rightful owner and beneficiary of the Policy, and (ii) that the Court Order  
 12 is invalid, and therefore, should be vacated and set aside.

#### 13 **VII. JURY DEMAND**

14 7.1 Bofl hereby requests a jury for the trial of this matter pursuant to Fed. R. Civ. P. 38  
 15 and CR 38.

#### 16 **VIII. PRAYER FOR RELIEF**

17 8.1 Plaintiff prays for money damages from the Defendants for tortious interference  
 18 with a contract.

19 8.2 Plaintiff prays for money damages from Defendants for the improper benefits  
 20 received through unjust enrichment.

21 8.3 Plaintiff prays for declaratory relief consistent with the pleadings herein, including  
 22 but not limited to, a declaration that Bofl is the owner and beneficiary of the Policy, and a  
 23 declaration that the Court Order is invalid and should be vacated and set aside.

24 8.4 Plaintiff prays for prejudgment interest at the highest allowable rate on all  
 25 liquidated amounts.

26 8.5 Plaintiff prays for attorneys' fees, and costs and expenses.

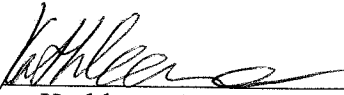
27 8.6 Plaintiff prays for any other and further relief as the Court deems just and equitable.



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DATED this 2nd day of April, 2014

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